IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2213 OF 1990

Nivrutti Rambhau Tupe,)
52 years, r/o. Wavi &)
Marhal,Tal. Sinnar,)
Dist. Nasik. ...)... .... Petitioner.

Versus

Vithal Kisan Durgude)
67 years, r/o. Wavi,)
Tal.Sinnar,Dist.Nasik.)... .... Respondent.

Mr. B.P. Abhale for the Petitioner.

Mr. Amol Mhatre with Mrs. Suhasini Mutalik for the Respondent.

CORAM : S. A. BOBDE, J.

DATED : 7TH JUNE, 2005.

JUDGMENT :

This is a petition by a tenant challenging the judgment and decree of the Appellate Court granting possession of the suit premises to the landlord.

2. The dispute is regarding Gram Panchayat House No. 366 of Village Wawi, out of which one Gala No.2 is in possession of the Petitioner. It appears that the Petitioner is using the premises for residence and barber shop. The Respondent terminated the Petitioner's tenancy by notice dated 18th July, 1978. The Petitioner by his reply dated 21st July, 1978 denied the Respondent's title over the suit property. In brief, the Petitioner's contention was that he was tenant of one Raghunath who let out the property to him. After Raghunath's death his widow Manjulabai sold the property to him.

3. The trial Court dismissed the Respondent's suit holding that the Plaintiff - Vithal has not brought any evidence to prove partition between Raghunath and him. The trial Court also appears to have been impressed by the fact that Raghunath's widow Manjulabai had filed a civil suit for partition against the Petitioner. The trial Court also noted that the Plaintiff had failed to carry out an amendment by which he sought to describe Raghunath as his uncle and not brother. Having regard to the fact that the Respondent - Vithal did not prove partition between Raghunath and him, the trial Court came to the

conclusion that he was not the owner at all and therefore was not entitled to a decree.

4. The Respondent carried the matter in appeal. Mr.Abhale, learned Counsel for the Petitioner submitted that the Appellate Court decided the matter exparte. However, the learned Counsel was not in a position to make a definite statement that the Petitioner had not been served with the notice of the appeal. It appears from the cause title that the Petitioner was absent at the time of hearing of the appeal. Having regard to the circumstances of the case, I found it appropriate to examine the matter on its own merit.

5. Having perused the judgment of the Appellate Court, it is clear that the Appellate Court has decreed the Respondent's suit on the basis of the cogent and reliable evidence. As regards the Respondent's ownership, the Appellate Court has relied on an extract of Gram Panchayat House No. 366 at Exh.3/1 which shows that the house stands in the name of the Respondent as owner. The Appellate Court has also noted that earlier this House stood in the name of Kisan Dada Teli i.e. the Respondent's father and

that there is a Gram Panchayat resolution of 26th September 1977 that the suit house had come to the share of the Plaintiff - Vithal. It is on this basis that the Appellate Court has found the Plaintiff to be the owner of the suit premises. I see no error of law or perversity in this finding of the Appellate Court.

6. As regards the Petitioner's claim that the Raghunath's widow Manjulabai sold the house to him for a sum of Rs.500/-, there is absolutely no evidence on record and it is clear that the Plaintiff has failed to substantiate his defence. Mr. Abhale, learned Counsel for the Petitioner, contended that the fact that Manjulabai admittedly filed a suit for partition against the Plaintiff would itself show that the Respondent does not have a clear title of the suit premises. The learned Counsel was, however, not in a position to point out any decree or order of the Court that the suit premises were decreed as belonging to Manjulabai and not the Respondent.

7. No other point has been substantially urged on behalf of the Petitioner. In this view of the matter, the Appellate Court having found the Respondent to be the owner of the suit premises on the basis of the

evidence of ownership from Gram Panchayat record, purportedly made on the basis of the partition, I see no reason to interfere with the decree of the Appellate Court. The writ petition is accordingly dismissed. Rule discharged.

8. Mr. Abhale, learned Counsel for the Petitioner, requests for time to vacate. Having regard to the fact that the Petitioner has been in possession of the suit premises since about 50 years, the Petitioner is granted six months time to vacate the premises failing which the decree shall become executable immediately. Till then the Petitioner shall not create any third party right in the premises or part with possession thereof.

9. In the circumstances of the case, there shall be no order as to costs.

Sd/-

(S. A. BOBDE, J.)

TRUE COPY

(A. M. TAILOR)
Personal Assistant to the
Hon’ble Shri Justice S.A.Bobde.